principals were or were not known at the time of the contract, relieve himself from that responsibility."

In our view, the sales invoice and the delivery note show that even if the respondents were agents for Syahazam in respect of the sale and delivery of those goods, they were contracting in such form as comes within the ambit of what Lord Denman said in *Jones* v. *Littledale*. Thus the respondents are clearly liable. The respondents' case being defenceless, we allow this appeal with costs here and in the court below. The appellants therefore are entitled to sign final judgment in terms of their prayer in the summons-in-chambers No. 847/1977.

Raja Azlan Shah Ag. C.J. (Malaya) and **Wan Suleiman F.J.** concurred.

Appeal allowed.

Solicitors: *Ong Ban Chye & Razak; Zulkifli & Co.*

MOHAMED MUSTAFA v. KANDASAMI (No. 2)

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman F.J. & Abdul Hamid J.) March 19 & 20, 1979]

[Penang — Federal Court Civil Appeal No. 126 of 1978]

Practice and Procedure — Leave to appeal to Yang di-Pertuan Agong — Stay of execution.

The respondent in this appeal (see p. 109) applied for conditional leave to appeal to the Yang di-Pertuan Agong and for stay of execution. It was argued that property of the value over $25,000 was involved in the appeal.

Held: (1) as the appeal involved property of the value of $25,000 or upwards leave should be granted to the respondent to appeal to the Yang di-Pertuan Agong on the usual terms;

(2) in the circumstances of this case the respondent ought to be granted stay of execution to maintain the *status quo*.

Cases referred to:-

(1) *Arieh Zvi Lipshitz* v. *Haim Aron Valero* [1948] A.C. 1, 5.

(2) *Meghji Lakhamshi and Brothers* v. *Furniture Workshop* [1954] A.C. 80, 81.

(3) *Becker* v. *Marion City Corp.* [1976] 2 W.L.R. 728, 736-737.

(4) *Oertel* v. *Crocker* [1947] 75 C.L.R. 261.

FEDERAL COURT.

T.R. Hepworth (*V. Thevendran* with him) for the appellant.

R.R. Chelliah (*R.K. Sharma* with him) for the respondent.

Cur. Adv. Vult.

Abdul Hamid J.: The respondent is asking the court to grant conditional leave of appeal to His Majesty the Yang di-Pertuan Agong against the order of the Federal Court made on February 2, 1979, and a stay of execution thereof until the appeal is heard and disposed of.

Mr. R.R. Chelliah, counsel for the respondent, submitted that the appeal involves subject matter respecting property of value exceeding $25,000, and in so far as stay of execution this is necessary in order to maintain the *status quo* and not to make the appeal, if successful, nugatory.

Briefly, the facts are that the respondent is in occupation of the whole of the ground floor of premises known as 743 Penang Street, Penang, and carrying on there an eating shop under the name and style of Sri Kaliaman Vilas Restaurant since July 1974, under a licence in his name.

The appellant is the sub-tenant of the whole of the said premises and also the owner and licence holder of an eating shop on the ground floor called Nava India Restaurant prior to August 1971. The respondent occupied the said ground floor on April 1970, purportedly as sub-tenant and carried on the said business of Nava India Restaurant as lessee of the appellant.

Following a dispute between the respondent and the appellant a writ of summons was filed in the Penang High Court by the respondent claiming that he was tenant of the appellant in respect of the same.

Judgment was given by the Penang High Court on June 30, 1978, in favour of the respondent. On appeal to the Federal Court it was ordered that the respondent deliver to the appellant vacant possession of the said ground floor, the eating shop and restaurant business; pay the appellant sum of $8,500 as agreed mesne profit for the period up to May 31, 1978, and also mesne profit at the rate of $300 per month from June 1, 1978, until delivery of possession.

In his submission Mr. Chelliah referred to subsection (1)(a)(ii) of section 74 Courts of Judicature Act, 1974, stating that the words "like amount or value" which apply to claim or question to or respecting property refer to amount or value of $25,000 or upwards and an appeal shall therefore lie from any final judgment where the appeal involves directly or indirectly, property, not claim or question, of the value of $25,000 or upwards.

In support of his contention Mr. Chelliah cited the case of *Arieh Zvi Lipshitz* v. *Haim Aron Valero*[1] and also the case of *Meghji Lakhamshi and Brothers* v. *Furniture Workshop*[2] where at page 81 it is held that —

"Article 3(a) of the Eastern African (Appeal to Privy Council) Order of Council, 1951, provides that an appeal shall lie as a right from any final judgment of the Court of Appeal 'where the matter in dispute on appeal amounts to or is of the value of £500 sterling or upwards, or where the appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the said value or upwards.'

Under whichever limb of article 3(a) of the Order in Council a case may fall, the 'value' must be looked at from the point of view of the appellant. The present case fell within the latter part of the article which dealt with 'some claim or question to or respecting property... of the said value or upwards,' and on the true construction it was the value of the property, not the value of the claim or question, which was the determining factor. Looked at from the angle of the appellant landlords, the value of the property, vacant possession of which they were claiming, was correctly taken on a capital value basis, which exceeded £500, and therefore under the article an appeal lay as of right."

Meghji Lakhamshi and Brothers v. *Furniture Workshop, supra,* was applied in the case of *Becker* v. *Marion City Corp.*[3] Lord Edmund Davies delivering the judgment of the Board had this to say —

"As their Lordships see it, the problem presently calling for

a solution is whether this appeal directly or indirectly involves a question respecting land of the designated value. They have considered the numerous authorities cited, some of them (such as *Oertel* v. *Crocker*)[4] arising under the similar, but not identical, wording of the Judiciary Act, 1903-1965 of Australia. They adopt the words of Lord Tucker in *Meghi Lakhamshi & Brothers* v. *Furniture Workshop*[2] when giving the judgment of the Board in relation to the similar wording of article 3(a) of the Eastern African (Appeal to Privy Council) Order in Council, 1951:

'... it is the value of the property, not the value of the claim or question, which is the determining factor. The presence of the word 'indirectly' seems to require this construction.'"

In the respondent's affidavit in support of the application at paragraph 15 it is affirmed that the value of the vacant possession of the ground floor of the said premises is $27,000 and the business goodwill is $26,000. A report and valuation by Messrs. C.H. Williams Talhar & Wong Sdn. Bhd., a firm of chartered surveyors, valuers and estate agents was also attached to the affidavit. In the light of the foregoing it is the respondent's contention that the subject matter in dispute in this case involves property of the value of $25,000 and upwards and as such it is covered by the second limb of subsection (1) of section 74 of the Courts of Judicature Act, 1974.

Mr. Hepworth, counsel for the appellant maintained that the value of the subject matter in dispute does not exceed $25,000 as the main issue is whether the respondent is a tenant or licensee and the question of property does not come in at all. As for the report and valuation it is submitted that such report is not exhibited to the affidavit. He urged the court not to accept the value given in the report both of vacant possession and the business goodwill.

In consideration of the authorities the court is of the view that to determine whether an appeal shall lie it is pertinent to consider whether the appeal involves, directly or indirectly, property of the value $25,000 or upwards and account should be taken in determining the value the right of the person appealing capable of valuation such as the value of vacant possession of premises in a tenancy dispute and the value of goodwill. With respect to counsel for the appellant, we see no merit in the appellant's contention that the subject matter in dispute is not of sufficient value for purposes of appeal to H.M. Yang di-Pertuan Agong.

It is true that the appellant has in his affidavit made a general denial of the value given in the valuation report but substantially there is no real challenge to the value submitted by the respondent. Leave is therefore granted to the respondent to appeal to H.M. Yang di-Pertuan Agong on the usual terms.

On the question of stay of execution it is I think settled law that the granting of such a stay is a matter of the court's discretion, and it is true that the exercise of such discretion must be founded upon established judicial principles. One of the determining factors that calls for consideration is whether by not making an order to stay of the execution it would make the appeal if successful, nugatory in that it would deprive an appellant of the results of the appeal. How pertinent that factor would be may vary according to the circumstances of each particular case.

In the instant case it is the considered judgment of this court that the respondent ought to be granted stay of execution to maintain the *status quo* so as not to deprive him, if successful, the result of his appeal. It is, however, felt that there should not be a stay of execution in respect of the sum of $8,500 mesne profit for the period up to May 31, 1978, and the order for mesne profit at the rate of $300 per month with effect from June 1, 1978.

Lee Hun Hoe C.J. (Borneo) and **Wan Suleiman F.J.** concurred.

Order accordingly.

Solicitors: *Allen & Gledhill; R.K. Sharma & Co.*

MAJLIS PERBANDARAN PULAU PINANG v. BOEY SIEW THAN & ORS.

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat & Syed Othman F.JJ.) December 6, 1978 & March 21, 1979]

[Penang — Federal Court Civil Appeal Nos. 29 & 30 of 1978]

Practice and Procedure — Public nuisance — Whether local authority can institute action for damages and injunction — Whether interlocutory injunction can be granted — Municipal Ordinance (S.S. Cap. 133), ss. 144(7), 144(9) & (11) — Municipal Bye-Laws 2(i) and 27(i) — Government Proceedings Ordinance, 1956, s. 8(1) — Specific Relief Act, 1950 (Act 137), ss. 50, 51 and 54 — Local Government Act, 1976 (Act 171), ss. 13, 80 and 82(1).

This was an appeal from the decision of the High Court (reported in [1978] 2 M.L.J. 156). The respondents were alleged to have made structural alterations to a building and to have used it as a restaurant without the approval or the licence of the local authority. The appellants, the local authority, brought an action for an injunction to restrain the respondents from illegally operating the eating house and damages for public nuisance. They also applied for and obtained *ex-parte* injunctions restraining the respondents from operating the said eating house until trial of the actions. The respondents applied to strike out the actions and also to dissolve the *ex-parte injunctions*. The High Court upheld their applications, and ordered that the actions be dismissed with costs and the *ex-parte* injunctions be dissolved. The appellants appealed.

Held, allowing the appeal: (1) section 80 of the Local Government Act, 1976 is clear and releases a local authority from the obligation to sue on a relator action, so that it can take action in its own name to abate a public nuisance on public or private premises within its own area in protection of the public interest;

(2) in this case there were serious questions to be tried and there was a reasonable prospect of the trial court granting an injunction, but if breaches of the law were allowed to continue, it would be impossible or useless to grant it at the trial. In such circumstances it would be right to grant an urgent relief of an interlocutory nature which worked in the interest of justice and also in the interests of the proper functioning of the appellants as a local authority.

Cases referred to:-

(1) *Tottenham Urban District Council* v. *Williamson & Sons Ltd.* [1896] 2 Q.B. 353, 354.

(2) *Nuneaton Local Board* v. *General Sewage Co.* (1875) L.R. 20 Eq. 127, 133.

(3) *Prestatyn Urban District Council* v. *Prestatyn Raceway Ltd. & Anor.* [1970] 1 W.L.R. 34, 44.

(4) *Solihull Metropolitan Borough Council* v. *Maxfern Ltd. & Anor.* [1977] 1 W.L.R. 127.

(5) *Assa Singh* v. *Mentri Besar, Johore* [1969] 2 M.L.J. 30, 48.

(6) *American Cyanamid* v. *Ethicon Ltd.* [1975] A.C. 396.

(7) *Charles Ostenton and Co.* v. *Johnston* [1942] A.C. 130, 138-139.